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No.

Supreme Court, U.S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

DERALD VAN CAMP,

Petitioner,

v.

AT&T INFORMATION SYSTEMS, WILLIAM BUGERA, DAVID B. CRIMER, MARISE E. STEPHENS,

Respondents.

Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

I. Whether state-law claims of employment discrimination are too tenuous or remote to relate to an employee benefit plan within the meaning of § 514(a) of the Employee Retirement Income Security Act (ERISA), 29 U.S.C. § 1144(a).

II. Whether ERISA § 514(d), 29 U.S.C. § 1144(d), precludes preemption of state discrimination laws that are consistent with and integral to the enforcement of federal discrimination laws.

PARTIES TO THE PROCEEDING

The parties to the proceeding in the Court of Appeals were the petitioner DERALD VAN CAMP and the Respondents, AT&T Information Systems, William Bugera, David E. Crimer, and Marise E. Stephens.

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PETITION FOR A WRIT OF CERTIORARI

The Petitioner Derald Van Camp respectfully prays that a writ of certiorari issue to review the opinion and judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled proceeding on April 28, 1992.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Sixth Circuit is reported at 963 F.2d 119, and is reprinted in the Appendix hereto, at App. A, p. 1a. The Order of Dismissal of the United States District Court for the Eastern District of Michigan is appended hereto, at App. B, p. 10a. The memorandum and order denying the Motion to Remand of the United States District Court for the Eastern District of Michigan (Cohn, D.J.) is re-

ported at 772 F. Supp. 980 and is reprinted in the Appendix hereto, at App. C, p. 12a.

JURISDICTION

The opinion and judgment of the United States Court of Appeals for the Sixth Circuit were entered on April 28, 1992. App. A, p. 1a. No petition for rehearing was sought. The jurisdiction of this Court to review the judgment of the Sixth Circuit is invoked pursuant to 28 U.S.C. § 1254(1).

STATUTES INVOLVED

Section 514 of the federal Employee Retirement Income Security Act of 1974 (ERISA), as amended, 29 U.S.C. § 1144 (1976 ed. and Supp. V) provides:

> (a) Except as provided in subsection (b) of this section, the provisions of this subchapter and subchapter III of this chapter shall supersede any and all State laws insofar as they may now or hereafter relate to any employee benefit plan described in section 1003(a) of this title and not exempt under section 1003(b) of this title.
>
> (d) Nothing in this subchapter shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the United States (except as provided in sections 1031 and 1137(b) of this title) or any rule or regulation issued under any such law.

Section 37.2202(1) of the Michigan Elliott-Larsen Civil Rights Act, Mich. Stat. Ann. § 3.548(101) *et seq.*, provides:

> (1) An employer shall not do any of the following:
>
> (a) Fail or refuse to hire, or recruit, or discharge, or otherwise discriminate against an individual with respect to employment, compensation, or a term, condition, or privilege of employment because of religion, race, color, national origin, age, sex, height, weight, or marital status.

(b) Limit, segregate, or classify an employee or applicant for employment in a way that deprives or tends to deprive the employee or applicant of an employment opportunity, or otherwise adversely affects the status of an employee or applicant because of religion, race, color, national origin, age, sex, height, weight, or marital status.

(c) Segregate, classify, or otherwise discriminate against a person on the basis of sex with respect to a term, condition, or privilege of employment, including, but not limited to, a benefit plan or system.

STATEMENT OF THE CASE

Petitioner DERALD VAN CAMP (hereafter "Van Camp") was employed in the State of Michigan by Respondent AT & T Information Systems (hereafter "AT&T") for more than thirty-two years. In July 1989, when he was fifty-one years of age, Van Camp was laterally reassigned from his position as Operations Manager in Detroit to the position of Staff Manager, Continental United States, reporting directly to a supervisor in the State of New Jersey. As AT&T was aware, Van Camp was unavailable for extensive travel because of his and his wife's ill health. Rather than take a demotion in order to remain in Detroit, he accepted AT&T's offer of a "specially enhanced" early retirement option effective December 30, 1989.

In October 1990, Van Camp and his wife commenced this action in the Circuit Court for the County of Wayne, Michigan (Detroit), alleging that he had been discriminatorily reassigned because of his age and gender, in violation of Michigan's Elliott-Larsen Civil Rights Act, MCL 37.2101 *et seq.*; MSA 3.548(101) *et seq.* Van Camp's complaint also alleged "[t]hat plaintiff [Derald Van Camp] was ultimately forced into an early retirement," inasmuch as AT&T was aware that he was unavailable for extensive travel and yet offered him no alternative to the reassignment other than an early retirement package or demotion. (Complaint and Jury Demand, ¶¶ 10-

13). Van Camp's initial complaint sought both money damages and reinstatement to his original position as Operations Manager in Detroit.

AT&T removed the Van Camps' complaint to the United States District Court for the Eastern District of Michigan, alleging that the court had "original jurisdiction over their claims pursuant to ERISA §§ 502(e) and (f), 29 U.S.C. §§ 1132(e), (f). AT&T's Notice of Removal also alleged that "Plaintiff's (sic) claims, benefits rights and obligations arise out of and relate to the incentive enhanced pension plan," inasmuch as Van Camp alleged that he was forced into accepting early retirement and he sought reinstatement to a job of his preference ncessarily including the resumed accumulation of future pension plan benefits. (Notice of Removal, ¶¶ 4-5). The Van Camps promptly moved to remand their complaint back to the Michigan state court, noting that their complaint alleged only discrimination by Mr. Van Camp's former employer in violation of Michigan law.

The district court offered the Van Camps an opportunity to amend their complaint to eliminate the request for reinstatement, which they did on February 5, 1991. Nonetheless, the district court denied the Van Camps' Motion to Remand in a Memorandum and Order issued on March 19, 1991. The district court found that "the amended complaint alleges wrongful acts by AT&T that involve not only violations of Elliott-Larsen, but a violation of ERISA as well, because it states that Van Camp was forced to accept early retirement at a lower level of benefits, a decision which according to the terms of the pension plan is irrevocable." App. C, p. 14a. The district court concluded that the United States Supreme Court's decision in *Ingersoll-Rand Co. v. McClendon*, 498 U.S. ——, 111 S. Ct. 478 (1990) was "determinative in its holding that where 'the existence of a pension plan is a critical factor in establishing liability under [a state's] wrongful discharge law,' there is preemption." App. C, p. 15a.

Predictably, AT&T then moved for summary judgment. By Order dated July 17, 1991, the court granted Defendants' Motion for Summary Judgment and dismissed Van Camps' claims, reasoning that "[s]ince plaintiffs do not intend to pursue their ERISA or any other federal law claim, there is no reason for the case to continue on the court's docket." App. B, p. 11a.

On appeal, the court of appeals affirmed both the district court's denial of Van Camp's motion for remand to state court and its order of dismissal based upon Van Camp's refusal to assert a claim under federal law.

The court of appeals saw the issue before it as "whether Van Camp's discrimination claims, resolution of which requires consideration of the impact of a retirement and benefit agreement entered into by Van Camp and AT&T pursuant to AT&T's pension plan, fall within the preemptive force of § 514(a), 29 U.S.C. § 1144(a) of the Employment (sic) Retirement Income Security Act (ERISA)." App. A, p. 2a. The court of appeals noted that as the party invoking application of the removal statute, AT&T had the burden of establishing that the case presents a federal question. App. A, p. 5a. The court then concluded that under this Court's decision in *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58 (1987), the "well-pleaded complaint rule did not preclude the district court from considering AT&T's preemptive defense as a basis for federal jurisdiction." App. A, p. 6a.

Although the court of appeals recognized that Van Camp's "amended complaint 'does not set forth a claim for failure to pay benefits,' nor does it otherwise seek to enforce a right expressly provided under ERISA" (*Id.*), the court nevertheless concluded that such a finding was not dispositive, relying upon *Ingersoll-Rand Co. v. McClendon*, 498 U.S. ——, 111 S. Ct. 478 (1990). App. A, p. 7a. The court also rejected Van Camp's argument based upon *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983), that their state-law discrimination

claims affected the AT&T Management Pension Plan in a manner too tenuous, remote or peripheral to warrant a finding that the law "relates to" the plan within the meaning of ERISA § 514(a).

Although the court of appeals agreed that state fair employment laws represent a traditional exercise of state authority, it concluded that Van Camp's discrimination claims would have more than an incidental effect on an existing pension plan and on the relations between AT&T as employer and Van Camp as beneficiary. App. A, p. 8a. The court of appeals reasoned that Van Camp's claim that he was forced to retire would require a court to rule on the validity of the retirement "agreement," a determination which the court said could only be made with reference to ERISA. Furthermore, the court was concerned that a finding in Van Camp's favor "would substantially alter the purportedly 'irrevocable' agreement under which Van Camp is receiving benefits." App. A, p. 9a. Indeed, the court concluded that a state court proceeding with respect to his discrimination claim against his employer "would, of necessity, involve determination of Van Camp's status as a participant in AT&T's pension plan." *Id.* It therefore found that Van Camp's state law discrimination claims were preempted by ERISA § 514(a).

REASONS FOR GRANTING THE WRIT

This case demands review by the Supreme Court to resolve an issue of extraordinary significance. The Sixth Circuit's far-reaching holding that ERISA preempts garden-variety state-law claims for age and gender discrimination threatens to eviscerate the states' traditional authority over employment matters. Furthermore, elimination of state-law claims would lead to an avalanche of federal claims that would paralyze the enforcement of federal employment discrimination laws.

The Sixth Circuit's decision conflicts with this Court's analysis of state fair employment claims in *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), and is also contrary to the decisions of the Ninth Circuit and the Michigan Supreme Court. *Shaw* holds that state claims of discrimination dealing with "hiring, promotion, salary and the like" simply do not relate to employee benefit plans. 463 U.S. at 97 n.17. Nor does the inclusion of benefits in a damages award make a state-law claim relate to a benefit plan. As both the Ninth Circuit and the Michigan Supreme Court have recognized, such a connection is too remote or peripheral to fall within ERISA § 514(a).

Shaw makes clear that when state claims relate to an employee benefit plan, the claims are not preempted by virtue of ERISA § 514(d), if the state law prohibition is consistent with a federal law prohibition. *Shaw*, 463 U.S. at 106. *Shaw* emphasizes that ERISA § 514(d) precludes preemption of state-law discrimination claims because preemption would impair the enforcement of the federal discrimination laws. The Sixth Circuit inexplicably ignores *Shaw's* seminal construction of ERISA § 514(d).

Petitioners respectfully submit that review by this Court is urgently needed given the importance of this issue to the states and to the state and federal discrimination laws.

I. THE SIXTH CIRCUIT'S DECISION THAT STATE DISCRIMINATION CLAIMS RELATE TO EMPLOYEE BENEFIT PLANS CONFLICTS WITH THIS COURT'S DECISION IN *SHAW v. DELTA AIR LINES, INC.* AND DECISIONS OF THE NINTH CIRCUIT AND MICHIGAN SUPREME COURT.

The touchstone of ERISA preemption is congressional intent as evidenced by the language of the statute. *Metropolitan Life Ins. Co. v. Massachusetts*, 471 U.S. 724, 727 (1985). ERISA "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." ERISA § 514(a), 29 U.S.C. § 1144(a) (1982).

While the preemption provision of ERISA is "conspicuous for its breadth," *FMC Corp. v. Holliday*, —— U.S. ——, 111 S. Ct. 403, 407 (1990), "common sense should not be left at the courthouse door." *Schultz v. National Coalition of Hispanic Mental Health and Human Services Organizations*, 678 F. Supp. 936, 938 (D.D.C. 1988). ERISA does not preempt every state law claim, as "some state actions may affect employee benefit plans in too tenuous, remote or peripheral a manner to warrant a finding that the law 'relates to' the plan." *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n.21 (1983). The two premises for the Sixth Circuit's conclusion that petitioner's state-law claim related to a benefit plan—the receipt of retirement benefits and the inclusion of benefits in a damages award—are connections that are too remote and peripheral to warrant ERISA preemption.

A. *Shaw* Recognizes That Discrimination Claims Are Typically Too Remote Or Peripheral To Relate To Employee Benefit Plans Within The Meaning Of ERISA § 514(a).

In *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85 (1983), the Court made a fundamental distinction between a standard claim of discrimination in hiring or firing, and a claim of differential treatment in benefits. *Shaw* held that certain provisions of the New York Human

Rights Law[1] related to employee benefit plans by "prohibit[ing] employers from structuring their employee benefit plans in a manner that discriminates on the basis of pregnancy." 463 U.S. at 97.[2] As for standard discrimination claims, *Shaw* directs that they are essentially unaffected by ERISA preemption. The Court cautioned:

> Of course, § 514(a) pre-empts state laws only insofar as they relate to plans covered by ERISA. The Human Rights Law for example, would be unaffected insofar as it prohibits employment discrimination in hiring, promotion, salary and the like.

463 U.S. at 97 n.17.

In the Sixth Circuit's view, the mere receipt of retirement benefits was apparently a sufficient "connection" to an employee benefit plan[3] to require ERISA preemption. This analysis disregards the teaching of *Shaw* that some

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[1] The New York Court of Appeals construed the New York Human Rights Law's prohibition against sex discrimination as encompassing pregnancy-based discrimination. *Brooklyn Union Gas Co. v. New York State Human Rights Appeal B.*, 41 N.Y.2d 84, 359 N.E.2d 393 (1976). That decision made the New York Law prohibit conduct that was lawful under Title VII, as interpreted by this Court in *General Electric Co. v. Gilbert*, 429 U.S. 125 (1976), prior to the Pregnancy Discrimination Act of 1978, Pub. L. No. 95-555, 92 Stat. 2076 (1978) amending Title VII, 42 U.S.C. § 2000e(k) (1976 & Supp. IV). As the Court discussed in *Shaw*, this difference between the New York Human Rights Law and Title VII precluded the savings effect of ERISA § 514(d). 463 U.S. at 103. *See* discussion *infra* at pages 14-16.

[2] The Court also ruled that the New York Disability Law related to ERISA benefit plans, since it required employers to pay specific benefits. 463 U.S. at 97.

[3] The court of appeals relied heavily on a retirement form petitioner signed, which appears to be a standard application for benefits, and states that it is "voluntary" and "irrevocable." There is no suggestion, by the parties or the courts below, that this retirement form could serve as a waiver of rights or claims under state law. *See Hammond v. United Of Oakland, Inc.*, 193 Mich. App. 146, 483

actions are simply too remote or peripheral to affect employee benefit plans. It is also contrary to the Ninth Circuit's decision in *Lane v. Goren*, 743 F.2d 1337 (9th Cir. 1984), which correctly applies *Shaw* to claims of discrimination arising from employment practices.

In *Lane*, trustees of an employee benefit fund sought to prevent the California Fair Employment and Housing Commission from enforcing the state employment discrimination law against the fund as an employer. Following the premise of *Shaw*, the Ninth Circuit reasoned that:

> It simply cannot be said that a state law which prohibits dismissal of an employee because of race "relate[s] to," "has a connection with" or "reference to" an employee benefit plan under these circumstances.

743 F.2d at 1340.

Lane properly examines the challenged conduct and the relationship between the parties to determine whether a claim is sufficiently related to a plan to fall within ERISA § 514(a).

The decision below also misconstrues and improperly extends this Court's decision in *Ingersoll-Rand Co. v. McClendon*, 498 U.S. ——, 111 S. Ct. 478 (1990). *McClendon* holds that a state-law claim that an employer wrongfully discharged an employee to avoid the payment of pension benefits[4] relates to an employee benefit plan. 111 S. Ct. at 483. The pivotal principle of *McClendon* is "the existence of a pension plan [a]s a critical factor in establishing liability."

N.W.2d 652, 654 (1992). In any event, the question of whether petitioner retired involuntarily was a matter for the state court to resolve on the merits, not the federal court in determining ERISA preemption.

[4] Petitioner does not claim any interference with his pension benefits, as he is receiving the pension benefits he had earned for his 32 years of service.

McLendon is easily distinguishable because McLendon's claim arose from conduct designed to deprive him of pension benefits.[5] Employment discrimination claims arise from employer conduct (here a reassignment) to deprive employees of their civil rights—conduct and claims that are totally independent of employee benefit plans. The Sixth Circuit's reasoning would extend *McLendon* to any case in which an employee received plan benefits subsequent to a discriminatory act. Such an extension of *McLendon* is clearly contrary to *Shaw*.

B. The Decision Below Conflicts With Decisions Of The Ninth Circuit And The Michigan Court Of Appeals, Which Hold That The Inclusion Of Benefits In A Claim For Damages Does Not Make The Claim "Relate To" An Employee Benefit Plan.

Until the decision below, both state[6] and federal courts[7] had concluded that ERISA does not preempt claims under state law where the remedy sought references or includes employee benefits. The Sixth Circuit reached a contrary result in concluding that an award of back pay,

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[5] *McLendon* also requires preemption when the state claim directly conflicts with an ERISA cause of action. *McLendon*, 111 S. Ct. at 484-85. This premise for preemption is wholly inapplicable to state fair employment claims, since ERISA does not even address discriminatory conduct based on age, race, sex, national origin, etc. *See Felton v. Unisource Corp.*, 940 F.2d 503 (9th Cir. 1991) (ERISA § 510 claim is distinct from one of racial discrimination).

[6] *Teper v. Park West Galleries, Inc.*, 431 Mich. 202, 427 N.W.2d 535 (1988); *Hill v. Ford Motor Co.*, 183 Mich. App. 208, 454 N.W.2d 125 (1989).

[7] *See Ethridge v. Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1988); *Martori Bros. Distrib. v. James-Massengale*, 781 F.2d 1349, 1358-59 (9th Cir. 1986), *modified*, 791 F.2d 799, *cert. denied*, 479 U.S. 949 (1986). *See also Greenblatt v. Budd Co.*, 666 F. Supp. 735, 742 (E.D. Pa. 1987) (resolution of claims for misrepresentation neither determine whether any benefits are paid nor directly affect administration of plan).

front pay, and additional pension benefits would "have more than an incidental effect on the existing pension plan." [8] App. A, p. 9a.

In *Teper v. Park West Galleries, Inc.*, 431 Mich. 202, 427 N.W.2d 535 (1988), an employee sued for wrongful discharge in violation of an employment contract and sought future pension benefits as part of her request for relief. The court rejected the employer's argument that such relief was preempted by ERISA, reasoning that:

> The rights and duties of these litigants have their genesis in a contract of employment. The fact that *damages* were calculated with reference to the plan does not change the nature of this cause of action. *See Lingle v. Norge Div. of Magic Chef, Inc.*, 486 U.S. 399 (1988).

427 N.W.2d at 541 n.12 (emphasis in original). The Michigan Supreme Court, unlike the court below, properly focused on whether the claim for liability arose under the plan, not whether the damages flowing from the injury would have any affect on the plan.

The reasoning of the Michigan Supreme Court parallels that of the Ninth Circuit in *Martori Bros. Distrib. v. James-Massengale*, 781 F.2d 1349, 1358-59 (9th Cir. 1986), *modified*, 791 F.2d 799, *cert. denied*, 479 U.S. 949 (1986) and in *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1405 (9th Cir. 1988). In *Martori*, the employer argued that make-whole awards of the California agricultural labor board "that are calculated by examining fringe benefits in comparable contracts alter

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[8] Respondent did not produce the AT&T Management Pension Plan in support of its contentions that the plan's terms would be altered or affected by petitioner's state law claims. The Sixth Circuit reached its conclusion based exclusively on the retirement form signed by petitioner. App. A, p. 8a.

the terms of the Employer's already existing ERISA plans." 781 F.2d at 1358. The Ninth Circuit viewed this argument as "factually incorrect" since the orders "do not require a change whatsoever in existing ERISA plans." *Id.* The orders, like the relief sought by petitioner, were not paid by the plan, but by the employer,[9] as are other damages for a wrongful employment action. *Id.*

The Ninth Circuit's decision in *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1989), relies on reasoning similar to *Teper* and *Martori*. In *Ethridge*, the court held that the employee's claim for "tortious discharge is not preempted by ERISA simply because Ethridge sought to recover lost salary and benefits." 861 F.2d at 1405. Key to the court's analysis was the distinction between the claim for loss of benefits as a consequence of the employer's unlawful conduct and not as the motivating factor driving the employer's conduct. *Id.*

As both the Ninth Circuit and Michigan Supreme Court have concluded, the inclusion of benefits in a claim for damages is "too remote" and "too peripheral" to fall within ERISA's preemptive force. *Martori*, 781 F.2d at 1359; *Teper*, 427, N.W.2d at 541. Because the Sixth Circuit's decision is contrary to the decision of these courts, the Court should grant the petition for a writ a *certiorari* to resolve this conflict.

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[9] The court below appears to have blurred the distinction between the employer and the pension plan, which are separate legal entities with distinct duties and obligations. *Fletcher v. Kroger Co.*, 942 F.2d 1137 (9th Cir. 1991).

II. PREEMPTION OF STATE EMPLOYMENT DISCRIMINATION CLAIMS WOULD SEVERELY IMPAIR THE ENFORCEMENT OF THE FEDERAL CIVIL RIGHTS LAWS.

State discrimination laws are vital to the effective enforcement of the federal civil rights statutes, as the Court acknowledged in *Shaw*, 463 U.S. at 102. Based on the significant interdependence between the state and the federal discrimination laws, this Court held that ERISA § 514(d) precludes preemption of state-law claims that are consistent with federal law. 463 U.S. at 101. The Court emphasized:

> Given the importance of state fair employment laws to the federal enforcement scheme, pre-emption of the [state law] would impair Title VII to the extent that the [state law] provides a means of enforcing Title VII's commands.

463 U.S. at 102.

The teaching of *Shaw* could not be more clear: state discrimination claims that are consistent with federal law[10] are not preempted by virtue of ERISA § 514(d). Despite *Shaw*'s explicit holding, the Sixth Circuit failed to even address the applicability of ERISA § 514(d), 29 U.S.C. § 1144(d) in its determination of whether petitioner's claims were preempted.[11]

There is no question that petitioner's claim for discriminatory reassignment based on age and sex leading to forced retirement falls within the prohibitions of both

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[10] *See Sorosky v. Burroughs Corp.*, 826 F.2d 794 (9th Cir. 1987). The Ninth Circuit noted the identical policy purposes of the state and federal civil rights laws and held that a state age discrimination claim for unlawful layoff was not preempted, even though state-law claim for interference with benefits was preempted.

[11] Petitioner argued below that based on § 514(d), *Shaw* expressly preserves state-law claims that are consistent with federal law.

Title VII [12] and the ADEA.[13] Indeed, the prohibitions of Michigan's Elliott-Larsen Civil Rights Act, like many of the state laws that prohibit sex and age discrimination, closely parallel Title VII [14] and the ADEA.[15] The state and federal laws typically provide similar remedies [16] for discrimination, namely reinstatement and the recovery of back pay and front pay, which have traditionally included lost pension benefits.[17]

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[12] *See* B. L. Schlei & P. Grossman, *Employment Discrimination Law* (2d ed. 1983 & Supp. 1989) (Chapter 18, Part V Constructive Discharge).

[13] Numerous courts recognize the ADEA's prohibition of constructive discharge or forced retirement. *See Wilson v. Monarch Paper Co.*, 939 F.2d 1138 (5th Cir. 1991) (constructive discharge where executive demoted to position with janitorial duties); *Spulak v. K Mart Corp.*, 894 F.2d 1150 (10th Cir. 1990) (constructive discharge of employee given ultimatum to retire or be terminated with loss of retirement benefits); *Hebert v. Mohawk Rubber Co.*, 872 F.2d 1104 (1st Cir. 1989) (no "voluntary" early retirement when choice was discharge or retirement); *Stamey v. Southern Bell Tel. & Tel. Co.*, 859 F.2d 855 (11th Cir. 1988) (constructive discharge when employee only offered lower paying alternatives after job elimination).

[14] *Farmington Education Assoc. v. Farmington School District*, 133 Mich. App. 566, 351 N.W.2d 242, 244 (1984) ("Section 202 of the Elliott-Larsen Civil Rights Act is modeled after section 703 of Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-2.")

[15] *See, e.g., Jenkins v. Southeastern Michigan Chapter, American Red Cross*, 141 Mich. App. 785, 369 N.W.2d 223 (1985).

[16] The ADEA empowers courts to grant "without limitation judgments compelling employment, reinstatement, or promotion," 29 U.S.C. § 626(b), and "such legal or equitable relief as will effectuate the purposes of this [Act]." 29 U.S.C. § 626(c). Title VII, 42 U.S.C. § 2000e-5(g)(1), authorizes courts to award reinstatement, back pay or any other equitable relief as appropriate.

[17] *See Blum v. Witco Chem. Corp.*, 829 F.2d 367, 373 (3d Cir. 1987); *Cox v. American Cast Iron Pipe Co.*, 784 F.2d 1546 (11th Cir.), *cert. denied*, 479 U.S. 883 (1986) (back pay under Title VII includes pension benefits); *Kelly v. American Standard, Inc.*, 640 F.2d 974 (9th Cir. 1981) (recovery for lost pension benefits); *Loeb v. Textron, Inc.*, 600 F.2d 1003 (1st Cir. 1979) (pension benefits are part of an individual's compensation and properly awardable).

The inevitable result of preempting state-law claims would be that victims of discrimination could not be made whole under state law for their injuries.[18] Thus, they would have to rely exclusively on the federal civil rights laws to recover full relief and remedies. The state agencies and state courts would be abandoned and the federal Equal Employment Opportunity Commission (EEOC)[19] and federal courts would be inundated with claims that traditionally have been brought in state court. This is the very type of impairment of federal law prohibited by ERISA § 514, as this Court held in *Shaw*, 463 U.S. at 102 and n.23.

Both the ADEA and Title VII strongly encourage and rely upon state agencies and state courts to resolve discrimination claims.[20] The Sixth Circuit's decision wholly disregards the significant interdependence of the state and federal employment discrimination laws. In so doing, it effectively eliminates § 514(d) from the analysis of whether state-law discrimination claims are preempted by ERISA.

Not only does the Sixth Circuit's decision impair federal discrimination law, it effectively eliminates traditional state common law claims.[21] By mandating removal to federal court, the decision precludes the availability of state-law damages awards that seek lost benefits.

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[18] To eliminate such damage claims from state law would "undercut the legislative scheme to remedy discriminatory wrongs." *Slayton v. Michigan Host, Inc.*, 122 Mich. App. 411, 416-17, 332 N.W.2d 498 (1983).

[19] Both Title VII, 42 U.S.C. § 2000e-5(c), and the ADEA, 29 U.S.C. § 630, require resort to state administrative remedies, which the Court in *Shaw* viewed as an important alternative to EEOC. 463 U.S. at 102 n.23.

[20] *See Astoria Federal Savings & Loan Assn. v. Solimino*, —— U.S. ——, 111 S. Ct. 2166 (1991); *Shaw*, 463 U.S. at 101.

[21] The Sixth Circuit's decision is a radical departure from established caselaw. *See, e.g., Kohmescher v. Kroger Co.*, 575 N.E.2d 439 (Ohio 1991) (forced retirement/age discrimination claims); *Swarts*

Several examples illustrate the potential consequences of the decision below. For example, a state race discrimination claim that black workers were targeted in a downsizing would be preempted if they received layoff or severance benefits under an ERISA plan. A common law claim for breach of employment contract would be preempted if the employee received continued health insurance benefits under COBRA.[22] State age discrimination claims by any employee eligible for a pension would also fall under the Sixth Circuit's construction of ERISA § 514(a).

The far-reaching effects of the Sixth Circuit's decision are perhaps best foreshadowed by Judge Churchill in *Morningstar v. Meijer, Inc.*, 622 F. Supp. 555, 557 (E.D. Mich. 1987):

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v. Sherwin-Williams Co., 244 N.J. Super. 170, 581 A.2d 1328 (1990) (age discrimination/forced retirement/waiver); *Hill v. Ford Motor Co.*, 183 Mich. App. 208, 454 N.W.2d 125 (1989) (employee action against former employer for breach of contract and misrepresentation in connection with employer's payment of early retirement benefits; misrepresentation claim held not to "relate to" plan so not preempted; however, breach of contract claim is preempted by ERISA); *Pizlo v. Bethlehem Steel Corp.*, 884 F.2d 116 (4th Cir. 1989) (in action by employees terminated allegedly in breach of oral contract for employment to age 62, although claim alleging informal and unauthorized amendment of pension plan was preempted by ERISA, state law claims for breach of contract, promissory estoppel, and negligent misrepresentation were not preempted by ERISA); *Hebard v. American Tel. & Tel. Co.*, 228 Neb. 16, 421 N.W.2d 10 (1988) (involuntarily retired employee alleges breach of employment contract and seeks damages in the form of lost salary); *Pfeiffer v. William Wrigley Jr. Co.*, 139 Ill. App. 3d 320, 484 N.E.2d 1187 (1985) (former employee alleging he was forced to retire at age 65 sued former employer alleging fraudulent inducements to accept employment).

[22] The Consolidated Omnibus Budget Reconciliation Act of 1985, Pub. L. 99-272, 100 Stat. 222, added provisions to ERISA requiring employers to offer continued group health insurance to employees and their beneficiaries after the employee's "voluntary or involuntary termination of employment," retirement, divorce or legal separation, entitlement to medicare benefits, or death.

> It is difficult to conceive where such preemption would stop. Any contract or tort action brought against an employer, or even against a third party, in which the plaintiff either lost a job or became unable to work, would be preempted because the jury would have to value the lost employment. It is even more difficult to conceive that Congress intended to emasculate state labor law by taking from it the authority to decide all questions of employment-at-will, civil rights in employment, and torts in employment.

Judge Richey echoed Judge Churchill's warning in admonishing that "there is hardly a state-law employment-based claim that would escape preemption." *Schultz v. National Coalition of Hispanic Mental Health and Human Services Organizations*, 678 F. Supp. 936, 938 (D.D.C. 1988).

CONCLUSION

For the foregoing reasons, petitioner respectfully requests that the Court grant the petition for a writ of *certiorari* to the Sixth Circuit Court of Appeals.

Respectfully submitted,

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Dated: July 27, 1992

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
SIXTH CIRCUIT

No. 91-1939

DERALD VAN CAMP,
Plaintiff-Appellant,

PATRICIA VAN CAMP,
Plaintiff,

v.

AT & T INFORMATION SYSTEMS, a Delaware corporation, WILLIAM BUGERA, DAVID E. CRIMER, and MARISE E. STEPHENS, jointly and severally,
Defendants-Appellees.

Argued March 30, 1992

Decided April 28, 1992

John R. Runyan (argued and briefed), Kathleen L. Bogas (briefed), Sachs, Nunn, Kates, Kadushin, O'Hare, Helveston & Waldman, Detroit, Mich., for plaintiff-appellant.

John M. Boyda, Anthony A. Haisch (argued and briefed), Haisch & Associates, Detroit, Mich., for defendants-appellees.

Before MARTIN, Circuit Judge; and LIVELY and BROWN, Senior Circuit Judges.

BAILEY BROWN, Senior Circuit Judge.

This appeal arises from state-law discrimination claims against Defendants AT & T Information Systems and certain of its executives ("AT & T"). Plaintiff-Appellant, Derald Van Camp, filed this action in state court. On the ground that it raises a federal question, AT & T removed the case to federal court. Van Camp now appeals the dismissal of his claims following the district court's denial of his motion for remand to state court and Van Camp's refusal to assert a claim under federal law. The issue before us is whether Van Camp's discrimination claims, resolution of which requires consideration of the impact of a retirement and benefit agreement entered into by Van Camp and AT & T pursuant to AT & T's pension plan, fall within the preemptive force of § 514(a), 29 U.S.C. § 1144(a), of the Employment Retirement Income Security Act ("ERISA"). Because AT & T has sustained its burden of showing that Van Camp's claims relate to AT & T's pension plan and, therefore, present a federal question, we affirm the district court's denial of Van Camp's motion to remand and the dismissal of the action.

I

After approximately thirty-two years of service to AT & T Van Camp, a 51-year-old operations manager, was reassigned from a staff position in Michigan to one that required him to make frequent trips to New Jersey. For reasons known to AT & T at the time of the reassignment, including the illness of Mrs. Van Camp, Van Camp considered himself unavailable for "extensive travel." Faced with accepting either an early retirement package or demotion, Van Camp retired. He signed an agreement attesting that he retired voluntarily and understood that his election to retire under AT & T's enhanced pension plan was irrevocable. Van Camp does not dispute that this pension agreement is subject to the requirements of and controlled by ERISA.

Asserting that age and sex discrimination violative of Michigan's Elliott-Larsen Civil Rights Act motivated AT & T's decision to reassign him and that the reassignment forced his retirement, Van Camp filed suit against AT & T in the Wayne County Circuit Court.[1] Van Camp sought reinstatement, back pay, front pay, and compensatory and exemplary damages. On the ground that Van Camp's claims relate to a pension plan governed by ERISA and alleging jurisdiction under 28 U.S.C. §§ 1331, 1337, and 1441, AT & T removed the case to the United States District Court for the Eastern District of Michigan. AT & T's notice of removal included the allegation that "Van Camp . . . seeks . . . an order or judgment requiring that his participation in the enhanced pension plan be discontinued and that he be reinstated to a job of his preference necessarily including the resumed accumulation of future pension plan benefits." J.App. at 127. In addition, AT & T attached to its answer to Van Camp's complaint a copy of the retirement and pension agreement signed by Van Camp.

Asserting that the district court lacked jurisdiction because the claims arose solely under Michigan law and did not raise a federal question, Van Camp moved for remand to state court. At oral argument on the motion to remand, the district court expressed the view that Van Camp's allegations of forced retirement and the demand for reinstatement implicated rights under ERISA because forced retirement might affect the validity of the retirement agreement and reinstatement would revoke its terms. To allow Van Camp an opportunity to avoid dismissal, the court granted him leave to amend his complaint. In the amended complaint, which did not include a prayer for reinstatement, Van Camp again sought relief under

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[1] Patricia Van Camp, who alleged deprivation of society, companionship, aid, wages, support and consortium of her husband, joined in the lawsuit and sought compensatory and exemplary damages. Mrs. Van Camp, however, is not a party on appeal.

Michigan's Elliott-Larsen on the ground that AT & T forced him to retire and caused him to lose benefits.

The court determined that Van Camp had not successfully cured his complaint and, therefore, was not entitled to a remand to state court to pursue his Elliott-Larsen claims. It reasoned that the complaint, raising the issue of whether Van Camp retired voluntarily, amounted to a challenge to the validity of the pension agreement and, therefore, implicated ERISA. Relying on *Ingersoll-Rand Co. v. McClendon*, —— U.S. ——, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990), a case in which the plaintiff alleged that his employer violated state law by terminating him to avoid paying retirement benefits, the court denied Van Camp's motion to remand. 772 F.Supp. 980.

Choosing not to pursue a remedy under ERISA or under other federal statutes, Van Camp sought reconsideration of the district court's order denying his motion to remand. The court reaffirmed its ruling and, upon AT & T's motion, summarily dismissed Van Camp's complaint on the ground that the only claims Van Camp asserted where Elliott-Larsen claims that were preempted by ERISA.

II

Because the district court granted AT & T's motion for summary judgment and dismissed the action, thereby rendering a final judgment, this court has jurisdiction to consider this appeal in which Van Camp assigns as error the district court's denial of his motion to remand. *Her Majesty the Queen in Right of the Province of Ontario v. City of Detroit*, 874 F.2d 332, 338 n. 3 (6th Cir. 1989) (reviewing denial of motion to remand when coupled with appeal from final judgment); *Fakouri v. Pizza Hut of America, Inc.*, 824 F.2d 470, 472 (6th Cir.1987) (same). We review de novo the denial of Van Camp's motion to remand this case, *Her Majesty the Queen*, 874 F.2d at 338, and we look to determine " 'whether the case was properly removed to federal court in the first

place.'" *Fakouri*, 824 F.2d at 472 (quoting *Takeda v. Northwestern Nat'l Life Ins. Co.*, 765 F.2d 815, 818 (9th Cir. 1985)). Furthermore, as the party invoking application of the removal statute, AT & T has the burden of establishing that the case presents a federal question. *Her Majestiy the Queen*, 874 F.2d at 339 (citing *Wilson v. Republic Iron & Steel Co.*, 257 U.S. 92, 97-98, 42 S.Ct. 35, 37-38, 66 L.Ed. 144 (1921)); *Ethridge v. Harbor House Restaurant*, 861 F.2d 1389, 1393 (9th Cir. 1988).

III

A

We first must examine the district court's determination that the well-pleaded complaint rule did not prevent AT & T from invoking ERISA as a basis for removal of Van Camp's state-law claims. Traditionally, the "well-pleaded complaint" rule has set limitations on the removal of state-law claims to federal court. As explained in *Caterpillar Inc. v. Williams*, 482 U.S. 386, 392, 107 S.Ct. 2425, 2429-30, 96 L.Ed.2d 318 (1987), and *Her Majesty the Queen*, 874 F.2d at 338-39, the rule provides that "federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Ordinarily, a defense arising under federal law does not confer removal jurisdiction. *Caterpillar*, 482 U.S. at 393, 107 S.Ct. at 2430; *Louisville & Nashville R.R. v. Mottley*, 211 U.S. 149, 153, 29 S.Ct. 42, 43-44, 53 L.Ed. 126 (1908). The Supreme Court has recognized, however, that the preemptive force of certain federal legislation, such as the Labor Management Relations Act ("LMRA") and ERISA, is so complete that, notwithstanding the principles that generally govern removal, *see Franchise Tax Bd. v. Construction Laborers Vacation Trust*, 463 U.S. 1, 9-12, 103 S.Ct. 2841, 2846-48, 77 L.Ed.2d 420 (1983), some state-law claims are entirely supplanted. *Avco Corp. v. Aero Lodge No. 735, International Ass'n of Machinists*, 390 U.S. 557, 88 S.Ct. 1235,

20 L.Ed.2d 126 (1968) (LMRA); *Metropolitan Life Ins. Co. v. Taylor*, 481 U.S. 58, 107 S.Ct. 1542, 95 L.Ed.2d 55 (1987) (ERISA). When this exception to the well-pleaded complaint rule—the "complete-preemption doctrine"—applies, a complaint, though on its face setting forth a claim under state law, is, for the purposes of removal, treated as a federal claim because federal law displaces any right of action under state law. *Taylor*, 481 U.S. at 65, 107 S.Ct. at 1547. In the instant case, therefore, the well-pleaded complaint rule did not preclude the district court from considering AT & T's preemption defense as a basis for federal jurisdiction.

B

Section 514(a) of ERISA, 29 U.S.C. § 1144(a), provides that, ERISA "supersede[s] any and all State laws insofar as they may now or hereafter relate to any employee benefit plan. . . ." Furthermore, under § 514(c)(1), 29 U.S.C. § 1144(c)(1), "State law" is defined as "all laws, decisions, rules, regulations, or other State action having the effect of law. . . ." Subject to the caveat that some claims have "too tenuous, remote, or peripheral" an effect on benefit plans to fall within ERISA's preemptive force, *Shaw v. Delta Air Lines, Inc.*, 463 U.S. 85, 100 n. 21, 103 S.Ct. 2890, 2901 n. 21, 77 L.Ed.2d 490 (1983), ERISA is "'intended to apply in its broadest sense to all actions of State or local governments, or any instrumentality thereof, which have the force or effect of law.'" *Id.* at 99, 103 S.Ct. at 2901 (quoting 120 Cong. Rec. 29933 (1974)). Therefore, state-law claims, and state-court decisions resolving those claims, "insofar as they . . . relate to any employee benefit plan," are preempted by ERISA.

Although Van Camp alleges that, in violation of Elliott-Larsen, AT & T forced him to retire, and, consequently, he lost certain benefits, his amended complaint does not set forth a claim for "failure to pay benefits,"

nor does it otherwise seek to enforce a right expressly provided under ERISA. Such a finding, however, does not end the inquiry because, as explained in *Ingersoll-Rand*, 111 S.Ct. at 484, § 514(a) is not to be read so narrowly as to include only those state laws "purporting to regulate plan terms and conditions." *See also Michigan Carpenters Council Health & Welfare Fund v. C.J. Rogers, Inc.*, 933 F.2d 376, 381 (6th Cir.), *cert. denied*,— U.S. ——, 112 S.Ct. 585, 116 L.Ed.2d 610 (1991). The issue, then, becomes whether Van Camp's claims seeking back pay, front pay, and other damages, but not eschewing his rights under his retirement agreement, has "too tenuous, remote, or peripheral" an effect on AT & T's employee benefit plan to be preempted by ERISA.

In *Firestone Tire & Rubber Co. v. Neusser*, 810 F.2d 550 (6th Cir. 1987), we set out three factors for consideration when determining whether a state-law claim falls outside of ERISA's broad preemption. As *Neusser* explains, "the factors . . . are not exhaustive and . . . no single factor is dispositive." *Id.* at 556. Nevertheless, they do provide some guidance as they reflect the goal Congress sought to achieve when it enacted the preemption clauses of ERISA—" 'reservation to Federal authority the sole power to regulate the field of employee benefit plans.' " *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 46, 107 S.Ct. 1549, 1552, 95 L.Ed.2d 39 (1987) (quoting 120 Cong. Rec. 29197 (1974)).

One factor to consider is whether the claim arises under a law that "represents a traditional exercise of state authority." *Id.* at 555; *see Shaw*, 463 U.S. at 101, 103 S.Ct. at 2902. A second factor is whether invocation of the state law will affect " 'relations among the principal ERISA entities.' " *Neusser*, 810 F.2d at 556 (quoting *Sommers Drug Stores Co. Employee Profit Sharing Trust v. Corrigan Enters.*, 793 F.2d 1456, 1467 (5th Cir. 1986), *cert. denied*, 479 U.S. 1089, 107 S.Ct. 1298, 94 L.Ed.2d 154 (1987)). Finally, the court may consider

"the incidental nature of any possible effect of state law on an ERISA plan." *Id.*

We agree with Van Camp's contention that state laws traditionally have played a significant role in protecting citizens from age and sex discrimination. *See Shaw*, 463 U.S. at 101, 103 S.Ct. at 2902. Application of the remaining two factors, however, suggests that Van Camp's claims are substantially related to an employee benefit plan, and, therefore, that the district court did not err in its determination that they were properly removed to federal court.

Careful consideration of the second factor of the *Neusser* test leads us to the conclusion that Van Camp's claims directly affect the status of AT & T as employer and Van Camp as beneficiary in an ERISA plan. Although Van Camp points out that he does not now seek reinstatement, his state-law claims are inconsistent with the retirement agreement under which he currently receives pension benefits. When Van Camp retired, he signed an agreement acknowledging that his decision to receive benefits under the enhanced pension plan was irrevocable and stating that he voluntarily retired. The effect of this agreement, one which provides that Van Camp is a voluntary retiree entitled to benefits under the ERISA plan, is the fulcrum on which resolution of this dispute turns. If Van Camp is entitled to recover on the theory that, as he claims, his retirement was forced by AT & T's age and sex discrimination and, therefore, was not voluntary, a court first would have to rule on the validity of the retirement agreement. Such a determination could be made only with reference to ERISA and would affect the existing benefit plan and the relations between Van Camp and AT & T as "principal ERISA entities." *See Neusser*, 810 F.2d at 556.

As to the third *Neusser* factor, a finding that Van Camp was forced to retire and is entitled to back pay, front pay, and additional pension benefits would substan-

tially alter the purportedly "irrevocable" agreement under which Van Camp is receiving benefits. We find, therefore, that, under the facts of this case, the age- and sex-discrimination claims that Van Camp asserts would have more than an incidental effect on the existing pension plan. A state-court proceeding would, of necessity, involve determination of Van Camp's status as a participant in AT & T's pension plan.

The foregoing analysis reveals that AT & T's preemption defense has merit. Although Van Camp seeks to invoke state laws that represent a traditional exercise of state authority, his claims would have more than an incidental effect on an existing pension plan and on the relations between AT & T as employer and Van Camp as beneficiary. Our determination is consistent with *Ingersoll-Rand*, which teaches that, when "the existence of a pension plan is a critical factor in establishing liability under the State's wrongful discharge law," ERISA preemtpion applies. 111 S.Ct. at 483.

Because the application of state law in this case is preempted and federal principles must be employed to resolve the issues raised by Van Camp's claims, the case was properly removed to federal court. *Cf. Lingle v. Norge Division of Magic Chef, Inc.*, 486 U.S. 399, 406, 108 S.Ct. 1877, 1881-82, 100 L.Ed.2d 410 (1988) (LMRA preemption of state-law claim "inextricably intertwined" with collective bargaining agreement); *Allis-Chalmers Corp. v. Lueck*, 471 U.S. 202, 217, 105 S.Ct. 1904, 1914, 85 L.Ed. 8d 206 (1985) (LMRA preemption of state-law claim "inextricably intertwined" with labor contract).

IV

For the reasons stated above, we AFFIRM the district court's denial of Van Camp's motion for remand to state court, and, because Van Camp refuses to assert a claim under federal law, we AFFIRM the order of dismissal.

APPENDIX B

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 90-73363

DERALD VAN CAMP and PATRICIA VAN CAMP,
Plaintiffs,

v.

AT&T INFORMATION SYSTEMS, a Delaware Corporation, WILLIAM BUGERA, DAVID E. CRIMER, and MARISE E. STEPHENS, jointly and severally,
Defendants.

ORDER

This case is DISMISSED. Defendants have moved for summary judgment on the grounds that the complaint alleges state law claims which are preempted by the Employee Retirement Income Security Act, 29 U.S.C. § 1000 *et seq.* (ERISA), and since no ERISA or other federal law claim is asserted it is entitled to judgment. Plaintiffs appear to agree and eschews any ERISA or other federal law claim. In its Memorandum And Order Denying Motion To Remand the Court explained why ERISA preempted plaintiffs' state law claim and went on to state

> Clearly, the amended complaint alleges wrongful acts by [defendant] that involve not only violation of Elliot-Larsen, but a violation of ERISA as well, because it states that [plaintiff was forced to accept early retirement at a lower level of benefits . . .]

Since plaintiffs do not intend to pursue their ERISA or any other federal law claim, there is no reason for the case to continue on the Court's docket.

SO ORDERED.

/s/ Avern Cohn
AVERN COHN
United States District Judge

DATED: July 17, 1991
Detroit, Michigan

APPENDIX C

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

Civil No. 90-73363

DERALD VAN CAMP and PATRICIA VAN CAMP,
Plaintiffs,

v.

AT&T INFORMATION SYSTEMS, a Delaware Corporation, WILLIAM BUGERA, DAVID E. CRIMER, and MARISE E. STEPHENS, Jointly and Severally,
Defendants.

MEMORANDUM AND ORDER
DENYING MOTION TO REMAND

This case involves a claim of age and sex discrimination in violation of Michigan's Elliott-Larsen Civil Rights Act, Mich. Stat. Ann. § 3.548(101) *et seq.* (Callaghan 1990). The complaint, filed on October 12, 1990 in the Wayne County Circuit Court, alleged that plaintiff Derald Van Camp (Van Camp), an employee of defendant AT&T Information Systems (AT&T), was ordered transferred to New Jersey from Michigan because of his age and sex, in violation of Elliott-Larsen, and that his only alternative was to accept an early retirement program or demotion. As a consequence of his known inability to accept the transfer, plaintiffs further alleged that Van Camp was "ultimately forced into an early retirement." Plaintiffs prayed for Van Camp's reinstatement, in addition to back pay and compensatory and exemplary damages.

Defendant AT&T removed the case to this Court on November 15, 1990, on the grounds that plaintiff's claims related to a pension plan governed by the Employee Retirement Income Security Act, 29 U.S.C. § 1001 *et seq.* (ERISA), and that the Court had original jurisdiction over matters that relate to such a plan pursuant to 29 U.S.C. §§ 1132(e) and (f). AT&T cited 28 U.S.C. § 1331 (federal question jurisdiction); 28 U.S.C. § 1337 (jurisdiction over actions arising from federal law regulating commerce); and 28 U.S.C. § 1441 (removal) in support of removal. On December 19, 1990, plaintiffs moved to remand the case to the Wayne County Circuit Court on the ground that their claims were based solely on Elliott-Larsen and raised no federal question. At oral argument on the motion to remand on January 28, 1991, the Court expressed uncertainty as to the nature of plaintiffs' claims because it appeared that the allegations of "forced retirement" and the prayer for reinstatement necessarily implicated ERISA rights and obligations. Under the authority of *Ingersoll-Rand Co. v. McClendon*, 112 L.Ed.2d 474 (1990), such state law claims are completely preempted by ERISA, 29 U.S.C. § 1144(a). However, based on plaintiffs' representations that they eschewed any right to reinstatement and intended to plead solely state law claims, the Court granted leave to file an amended complaint. See Order of February 6, 1991.

On February 6, 1991, plaintiffs filed an amended complaint in an effort to eliminate allegations that would summon the preemptive force of ERISA. Plaintiffs were unsuccessful. Paragraphs 9-11, 13, 14, and 17 of the amended complaint, as well as paragraphs a) and e) of plaintiffs' request for relief continue to implicate ERISA. These paragraphs state:

> 9. That on or about July 30, 1989 defendants unilaterally assigned plaintiff to a staff position which required direct line reporting to the State of New Jersey.

10. That plaintiff was given no choice in the matter of reassignment, despite his years of loyal service with the company.

11. That the only alternative plaintiff was given was to accept an early retirement package or demotion, despite his willingness and enthusiasm to retain his original position.

. . . .

13. That plaintiff was ultimately forced to choose an early retirement, effective December 30, 1989.

14. That plaintiff was transferred and then forced into said retirement in whole or in part because of his age . . . .

17. That . . . plaintiff Derald Van Camp . . . has suffered a loss of earnings, pension and other supplemental benefits . . . .

. . . .

WHEREFORE, plaintiffs Derald Van Camp and Patricia Van Camp pray that this Honorable Court grant the following remedies:

a) Declare that the aforementioned practices and actions of the defendants constitute unlawful employment practices in violation of the Michigan Civil Rights Act, MCLA 37.2101, *et seq.*;

. . . .

e) Award such other relief as this Court deems just and proper.

Clearly, the amended complaint alleges wrongful acts by AT&T that involve not only violations of Elliott-Larsen, but a violation of ERISA as well, because it states that Van Camp was forced to accept early retirement at a lower level of benefits, a decision which, according to the terms of the pension plan, is irrevocable. Unless Van Camp's retirement was involuntary, there would be no

justification for altering or not enforcing the terms of the pension plan. Indeed, defendant has included in its opposition papers a triggering form signed by Van Camp which states in part, "This is my official notification to voluntarily retire from AT&T with a service pension on December 30, 1989."

Ingersoll-Rand is determinative in its holding that where "the existence of a pension plan is a critical factor in establishing liability under [a state's] wrongful discharge law," there is preemption. 112 L.Ed.2d at 484. As the Supreme Court noted, ERISA's preemption provision was intended "to ensure that plans and plan sponsors would be subject to a uniform body of benefit law; the goal was to minimize the administrative and financial burden of complying with conflicting directives among States or between States and the Federal Government." *Id.* at 486. It is no denigration of the Michigan judicial system to say that relegating plaintiff's dispute with AT&T to that system could not achieve the goal of ERISA's preemption provision.[1]

The motion to remand is DENIED. Given the stated schedule, there is no need to amend the Pretrial And Scheduling Order entered December 13, 1990.

SO ORDERED.

/s/ Avern Cohn
AVERN COHN
United States District Judge

DATED: March 19, 1991
Detroit, Michigan

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[1] In fact, the Court notes that, in a similar case, the Michigan Court of Appeals held that the plaintiff's state law claims were preempted by ERISA. *Brinker v. Michigan Bell Telephone Co.*, 152 Mich. Appt. 729 (1986).

Supreme Court, U.S.
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No. 92-171

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

DERALD VAN CAMP,

Petitioner,

v.

AT&T INFORMATION SYSTEMS, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether the lower court erroneously held that petitioner's state-law challenge to the validity of his early retirement election "related to" an employee benefit plan and was therefore preempted by the Employee Retirement Income Security Act under this Court's rulings in *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983), and *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. 478 (1990).

STATEMENT REQUIRED BY RULE 29.1

AT&T Information Systems, Inc. was merged into the American Telephone and Telegraph Company ("AT&T") effective December 31, 1989. AT&T has no parent company. In addition to its wholly-owned subsidiaries, AT&T has ownership interests, either directly or through wholly-owned subsidiaries, in the following companies that have publicly-traded securities: AT&T Capital Corporation, AT&T Credit Corporation, *Compagnie Industriali Riunite* S.P.A., and NCR Corporation.

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STATUTES

Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (codified as amended at 29 U.S.C. § 1001 *et seq.*)
29 U.S.C. § 1144(d) ..... *passim*

IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

No. 92-174

DERALD VAN CAMP,

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v.

AT&T INFORMATION SYSTEMS, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

---

RESPONDENTS' BRIEF IN OPPOSITION

This case presents neither the questions nor the conflicts the Petition alleges. Petitioner brought this suit to invalidate his election to participate in an enhanced early retirement offer that had been extended to him under a pension plan. Contrary to petitioner's misstatements, the Sixth Circuit did not rule that the Employee Retirement Income Security Act (ERISA) preempted this state-law claim because petitioner "received plan benefits subsequent to [an allegedly] discriminatory act" and was seeking "inclusion of benefits in a claim for damages." Pet. at 11. Rather, the court held that, because petitioner challenged the validity of a pension document subject to the requirements of ERISA (Pet. App. 2a), and his claims therefore "directly affect [his] status . . . as [a] beneficiary in an ERISA plan" (*id.* at 8a), those claims "relate to" a plan within the meaning of Section 514(a) of ERISA and were preempted.

This holding is a routine application of well-settled principles to a unique set of facts. It follows this Court's rulings in *Shaw* v. *Delta Air Lines, Inc.*, 463 U.S. 85 (1983), and *Ingersoll-Rand Co.* v. *McClendon*, 111 S. Ct. 478 (1990), and does not conflict with the decisions of any other court. The only way petitioner can claim otherwise is by misstating the nature of his claims and the decisions below.

COUNTERSTATEMENT OF THE CASE

1. In July 1989, AT&T laterally reassigned petitioner from his position as Operations Manager in Detroit to a position as a Staff Manager, Continental United States, in a Detroit suburb. In the latter position, petitioner reported to a supervisor in New Jersey. Petitioner objected to the reassignment because, in his view, it would entail extensive travel, a requirement unacceptable to him in light of his wife's poor health.[1]

Shortly thereafter, AT&T offered all eligible employees the choice of electing to participate in the AT&T Management Pension Plan Special Retirement Option, a specially enhanced early retirement program extended pursuant to AT&T's ERISA-governed Management Pension Plan. Under the terms of the early retirement program, petitioner and thousands of other potentially eligible employees were offered a credit of five additional years of service and five additional years in their pension "age," plus a 15 percent enhancement of pension benefits for five years. As a result, under the offer, petitioner's pension payments would be calculated as though he had served 37, rather than 32, years with the company and as if he had retired at age 56 rather than 51. His pension payments would then be enhanced an additional 15 percent for five

[1] In this Court, petitioner claims that his own poor health, as well as that of his wife, precluded "extensive" travel. Pet. at 3. This assertion, however, appears nowhere in the pleadings below and is made for the first time in the Petition.

years. In order to receive these and certain other enhancements, however, the AT&T Management Pension Plan explicitly required eligible employees to retire voluntarily and irrevocably.[2]

Petitioner accepted the enhanced early-retirement offer on November 22, 1989. In the election form he signed, which bears the caption "Voluntary Decision to Retire from AT&T on December 30, 1989," petitioner acknowledged that he had "read the information package that describes recent enhancements to the AT&T Management Pension Plan and other provisions relative to the Special Retirement Option." See Brief for Appellees at 3. He further acknowledged that the election form was his "official notification to voluntarily retire from AT&T with a service pension on December 30, 1989," and that he "underst[ood], that [his] decision under the Special Retirement Option [was] irrevocable." *Id.*

2. Eleven months later, petitioner initiated suit in Michigan state court alleging that his "voluntary" retirement was in fact a discriminatorily-motivated constructive discharge. Alleging violations of Michigan's Elliott-Larsen Civil Rights Act, petitioner sought back pay, front pay, exemplary and punitive damages, and reinstatement to the company from which he had "irrevocably" retired. Following AT&T's removal of the case, the United States District Court for the Eastern District of Michigan denied petitioner's motion for remand, noting that "it appeared that the allegations of 'forced retirement' and the prayer for reinstatement necessarily implicated ERISA rights and obligations." Pet. App. 13a.

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[2] These requirements were directly related to the administration, and administrability, of the Management Pension Plan. The requirement that employees retire irrevocably, for example, protected the Plan against the disruption that would occur if large numbers of the thousands of eligible employees chose special enhancements only to relinquish them later.

The court afforded petitioner an opportunity to amend his complaint, however, in order to plead claims arising solely under state law. *Id.*

Petitioner thereafter filed an amended complaint in which he again alleged that AT&T had "forced" him into retirement for discriminatory reasons. He deleted certain references to AT&T's benefit plans, however, and dropped his request for reinstatement in the hopes of "circumvent[ing] any possible suggestion that [he] was seeking to undo his voluntary early retirement." Brief of the Appellant Derald Van Camp at 2. The district court nevertheless recognized that, "[u]nless [petitioner's] retirement was involuntary, there would be no justification for altering or not enforcing the terms of the pension plan." Pet. App. 14a-15a. Petitioner's cosmetic changes, the court concluded, did not alter the substance of his claims, which "continue to implicate ERISA." *Id.* at 13a. Citing this Court's decision in *Ingersoll-Rand*, the district court found that " 'the existence of a pension plan is a critical factor in establishing liability under [petitioner's Michigan] wrongful discharge' " claims (*id.* at 15a (quoting *Ingersoll-Rand*, 111 S. Ct. at 483)), and that his claims were therefore preempted under Section 514(a) of ERISA.

Rather than assert any claim under ERISA or under federal employment law, petitioner sought reconsideration of the district court's order. Following the denial of that request, AT&T moved for summary judgment, which the district court granted by order dated July 17, 1991. In dismissing petitioner's claims, the court noted that "[s]ince [petitioner] do[es] not intend to pursue [his] ERISA or any other federal law claim, there is no reason for the case to continue on the Court's docket." *Id.* at 11a.

3. The Sixth Circuit affirmed. The court recognized that, while the sweep of ERISA's preemption provision is broad, some claims may affect employee benefit plans in

a manner "too tenuous, remote, or peripheral" to "relate to" the plan. *Id.* at 6a (quoting *Shaw*, 463 U.S. at 100 n.21). The court of appeals found, however, that, "under the facts of this case," petitioner's claims "would have more than an incidental effect on [an] existing pension plan" and were thus preempted. *Id.* at 9a.

Critical to the court's determination was the fact that petitioner's state law claims could not be resolved without passing on the validity of his election to participate in AT&T's ERISA-governed special retirement plan. Despite petitioner's insistence that this election was "immaterial" to his state law claims (Brief of the Appellant Derald Van Camp at 12), the court of appeals recognized that those claims were "inconsistent with [his] retirement agreement." Pet. App. 8a. The court explained that this agreement

> is the fulcrum on which resolution of [petitioner's claims] turns. If [petitioner] is entitled to recover on the theory that, as he claims, his retirement was forced by AT&T's age and sex discrimination, and, therefore, was not voluntary, a court first would have to rule on the validity of the retirement agreement. Such a determination could be made only with reference to ERISA and would affect the existing benefit plan and the relations between [petitioner] and AT&T as 'principal ERISA entities.'

Pet. App. 8a (citation omitted). Any finding that petitioner was forced to retire, the court concluded, would "substantially alter the purportedly 'irrevocable' agreement under which [he] is receiving benefits" and thus would "directly affect [his] status . . . as [a] beneficiary in an ERISA plan." *Id.* at 8a-9a.

REASONS FOR DENYING THE PETITION

The Sixth Circuit's decision is an application of this Court's holdings in *Shaw* and *Ingersoll-Rand* to a set of unique facts. It is neither "extraordinary" nor "far-reaching," and in no way threatens to "eviscerate the states' traditional authority over employment matters" or to "paralyze the enforcement of federal employment discrimination laws." Pet. at 7. Petitioner's claims to the contrary depend entirely on his mischaracterization of the lower court's ruling.

A. According to petitioner, "the two premises for the Sixth Circuit's conclusion that [his] state-law claim related to a benefit plan [were] the receipt of retirement benefits and the inclusion of benefits in a damages award." *Id.* at 8. Even the most cursory examination of the opinion below, however, reveals that the Sixth Circuit did not rest its decision on either of these grounds.

The Sixth Circuit's preemption determination rested on the fact that petitioner's claims "would, of necessity, involve [a] determination of [his] *status* as a participant in AT&T's pension plan." Pet. App. 9a (emphasis added). Thus, just as in *Ingersoll-Rand*, his "cause of action relate[d] not merely to pension benefits, but to the essence of the pension *plan* itself." 111 S. Ct. at 483 (emphasis in original). In particular, the court noted that, in order to pass on petitioner's claims of discrimination, a court "first would have to rule on the validity of the *retirement agreement*." Pet. App. 8a (emphasis added). It therefore found that these claims were related to a pension plan not by virtue of petitioner's "mere receipt of retirement benefits" (Pet. at 9), but because his state claims required "a finding that [he] was forced to retire," and this finding in turn "*would substantially alter the purportedly 'irrevocable' agreement*." Pet. App. 8a-9a (emphasis added). Such claims, the Sixth Circuit concluded, were sufficiently related to a pension plan to be preempted under Section 514(a).

The lower court's decision was manifestly correct. Under the terms of the AT&T Management Pension Plan Special Retirement Option, petitioner could not participate in the enhanced plan unless he retired voluntarily and irrevocably. While he may now eschew reinstatement and otherwise seek to "circumvent any possible suggestion that [he is] seeking to undo his voluntary early retirement" (Brief of the Appellant Derald Van Camp at 2), the reality is that he cannot prevail on his discrimination claims unless he proves that his retirement was involuntary. Whether or not he formally seeks to rescind his election, therefore, his claims necessarily constitute a challenge to his status as a participant in AT&T's ERISA-governed early retirement plan: if he were to prevail, his prior election would be null and void and, under the terms of the plan, AT&T would have to terminate petitioner's participation; alternatively, if AT&T permitted petitioner to continue to participate notwithstanding his involuntary retirement, it would effectively alter the terms of its plan for this one participant. Moreover, state law challenges to the voluntariness or irrevocability of special enhancement elections would plainly burden the administration of the plan itself, by undermining the protections these requirements were designed to afford the plan. See note 2, *supra*.

The Sixth Circuit's decision does not conflict with the decision of any other court. None of the cases petitioner cites involved claims that "directly affect[ed] the status of [the employees] . . . as beneficiar[ies] in an ERISA plan." Pet. App. 8a. All but one simply held that a state claim is not related to a pension plan within the meaning of Section 514(a) simply because the plan serves as a measure of damages.[3] In the remaining case, *Lane* v.

[3] *Martori Bros. Distribs.* v. *James-Massengale*, 781 F.2d 1349 (9th Cir. 1986), involved a state unfair labor practice award in which an employer was required to pay damages measured by the difference between the ERISA-governed benefits it actually paid its employees and those it would have paid had it bargained in good

Gorcia, 743 F.2d 1337 (9th Cir. 1984), the Ninth Circuit announced the unremarkable proposition that a pension trust fund is subject to state anti-discrimination laws in its capacity as an employer.

Moreover, because the Sixth Circuit's decision is limited to state claims that affect the employee's status as a participant in an ERISA plan, it will not result in widespread preemption of "garden-variety" state discrimination suits. Indeed, the Sixth Circuit's preemption analysis is fully consistent with the Michigan Court of Appeals' determination in *Brinker* v. *Michigan Bell Telephone Co.*, 394 N.W.2d 88 (Mich. Ct. App. 1986), that ERISA preempts state-law fraud and misrepresentation challenges to the validity of an early retirement election. In *Brinker*, as here, the employee claimed that his election was the product of employer conduct proscribed by state law. Like the Sixth Circuit, the Michigan court concluded that the claim was related to an ERISA plan because the state causes of action were "intimately connected to defendant's administration of the" ERISA-governed plan. *Id.* at 90.

In concluding that petitioner's state claims were preempted, the lower court engaged in precisely the type of careful line-drawing that *Shaw* requires. See 463 U.S. at 100 n.21. Because the line the court drew was factually and legally correct, and does not conflict with the

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faith. The award, which entailed "the calculation of damages for lost compensation by referring to existing ERISA plans" (*id.* at 1359), did not affect the employees' status as participants in the plan. Similarly, in *Teper* v. *Park West Galleries, Inc.*, 427 N.W.2d 535 (Mich. 1988), the pension plan merely "serve[d] as a measure of damages suffered as a result of the employer's breach" of contract, *id.* at 545 (Riley, C.J., concurring); the employee's claim did not implicate her status under the plan. And in *Ethridge* v. *Harbor House Restaurant*, 861 F.2d 1389 (9th Cir. 1988), in which the Ninth Circuit held that a tortious discharge claim was not preempted "simply because [the employee] sought to recover lost salary and benefits," the court specifically noted that there was no dispute over whether the employee "was a participant in the plan." *Id.* at 1405.

decisions of other federal and state courts, it presents no occasion for review by this Court.

B. For the same reasons, there is no basis for review of petitioner's related claim that the Sixth Circuit's ruling vitiates Section 514(d) of ERISA and will thus "severely impair the enforcement of the federal civil rights laws." Pet. at 14. Section 514(d) provides that nothing in Section 514(a) "shall be construed to alter, amend, modify, invalidate, impair, or supersede any law of the *United States*." 29 U.S.C. § 1144(d) (emphasis added). In *Shaw*, this Court held that Section 514(d) does not preserve state discrimination laws that prohibit conduct that Title VII does not proscribe. 463 U.S. at 104-06. The Court did not determine the extent to which Section 514(d) preserves *state* law, observing only that it "*may* operate to exempt [from the preemptive sweep of subsection (a)] provisions of state laws upon which federal laws *depend* for their enforcement." *Id.* at 104 (emphasis added).

Petitioner treats this dictum as a holding, then claims that the Sixth Circuit violated that holding because its decision will force discrimination victims to "abandon[]" state remedies (Pet. at 16 & n.21) and thereby "paralyze" the enforcement of federal civil rights laws. *Id.* at 7. This argument once again rests on petitioner's misstatement of the Sixth Circuit's ruling. The Sixth Circuit did not hold that state discrimination claims are preempted if they are brought by any "employee [who] received plan benefits subsequent to a discriminatory act." *Id.* at 11. Rather, it held only that those state discrimination claims that directly affect an employee's status as a participant in an ERISA plan will be preempted.

Shaw upheld a "partial pre-emption of state fair employment laws" because the "minor practical difficulties" of such preemption do not impair the enforcement of *federal* law. 463 U.S. at 105-06. Subsequently, other courts have recognized that Section 514(d) does not preserve state law claims that, while fully consistent with

federal antidiscrimination law, directly affect the relations of plan beneficiaries and the plan. See, *e.g.*, *Champion Int'l Corp.* v. *Brown*, 731 F.2d 1406, 1408-09 (9th Cir. 1984) (Section 514(d) does not preserve state age discrimination claim affecting the manner in which a plan determines the service credit of beneficiaries). Nor does petitioner cite a single holding of any other court that supports his contention that Section 514(d) preserves his claims.[4]

In any event, petitioner's claims fall outside the scope of Section 514(d) for a second reason: they are inconsistent with federal law. Petitioner failed to initiate state proceedings within 300 days of his allegedly coerced agreement to retire, as both Title VII and the Age Discrimination in Employment Act require. Because the enforcement of federal law does not depend on the prosecution of state claims that are untimely under federal limitations periods, courts have consistently concluded that such claims are not preserved by Section 514(d). See *Warren* v. *Oil, Chem. & Atomic Workers Union-Indus. Pension Fund*, 729 F. Supp. 563, 566-67 (E.D. Mich. 1989) (Elliott-Larsen Act claim commenced outside federal limitations period not preserved); *Nolan* v. *Otis Elevator Co.*, 505 A.2d 580, 588 (N.J.) (invocation of state remedy "after a federal remedy is no longer available does not further the federal program" and thus is not preserved by Section 514(d)), *cert. denied*, 479 U.S. 820 (1986). The Sixth Circuit's implicit rejection of petitioner's Section 514(d) argument below, therefore, was entirely proper, and does not conflict with the decision of any other court.

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[4] The sole case petitioner cites in support of his expansive view of Section 514(d) does not even mention the provision, and involved a claim that the employer did not contend was preempted. *See Sorosky* v. *Burroughs Corp.*, 826 F.2d 794, 800 (9th Cir. 1987).

CONCLUSION

For the foregoing reasons, the petition should be denied.

Respectfully submitted,

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